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LOUIS F. RACINE (1917-2008)
WILLIAM D. OLSON, OF COUNSEL

May 28, 2008

David R. Tuthill, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: Clear Springs Foods, Inc.'s Snake River Farm Request for
2008 Conjunctive Management*

Dear Director Tuthill:

This letter is submitted on behalf of North Snake and Magic Valley Ground Water Districts in response to your May 13, 2008 letter which concluded as follows:

"The Ground Water Districts have committed to provide the amended plan within two weeks after the May 14, 2008 meeting with the Board of Clear Lake Country Club. Significant progress needs to be made in this regard by May 28, 2008, to prevent a curtailment order."

As discussed below, the Ground Water Districts have indeed made significant progress since the May 7, 2008 status conference as follows:

1. A Water Conveyance Agreement has been entered into between the North Snake and Magic Valley Ground Water Districts and the North Side Canal Company to provide for the conveyance of up to 35,000 AF of storage water obtained by the Districts necessary to deliver water to approximately 9300 acres converted from ground water to surface water as described in the Districts' Joint Replacement Water Plan for 2008. The water to supply these conversions has been leased and the initial 10,000 AF

leased from Aberdeen-Springfield Canal Company has been transferred into the account of North Side Canal Company with the associated administrative fees paid.

2. A proposed Water Lease Agreement has been submitted by the Ground Water Districts to Clear Lake Country Club. Representatives from the Districts with counsel met with the manager, officers and board of directors of Clear Lake Country Club on May 14, 2008, to discuss the proposed Lease Agreement. The proposal was tabled pending further investigation by the Country Club's Board, with a decision expected at the next meeting of the Board scheduled for June 9, 2008. If the Lease Agreement is approved, the Country Club's Water Right Nos. 36-4148B, 36-16237 and 36-4074 totaling 3.5 cfs will be utilized as a part of the Amended Mitigation Plan. Following the May 14 meeting, an on-site inspection of the Country Club's facility occurred. The Country Club has provided engineering schematics of its water delivery system based upon which preliminary engineering work has been undertaken by the Ground Water Districts' engineer, Charles M. Brendecke. The Country Club's spring water rights are delivered from the same source and use the same pipes as Snake River Farm's water. Accordingly, no new infrastructure is needed to deliver the Country Club's water to Snake River Farm.
3. A Water Lease Agreement has been under negotiation with the Idaho Department of Fish and Game with respect to Water Right No. 36-4076. Attached is a copy of the Water Lease which was executed by the Idaho Department of Fish and Game on May 28, 2008, and is being circulated for signatures by the lessee Ground Water Districts. An on-site inspection of the Fish and Game property and water rights was also conducted on May 14, 2008. It is anticipated this water right may be used to supplement the Country Club water right if necessary. If the Country Club water right is not secured under lease, the Fish and Game water right will be the primary source of mitigation. Conceptual site plan and engineering work have been commenced and is in progress by the Ground Water Districts' engineer Charles M. Brendecke with respect to the Fish and Game water right as well.
4. An alternative for the delivery of the Fish and Game water right is to improve the point of diversion of Spring 1 near the Country Club spring pump station which would enable the required amount of mitigation water, 1.5 cfs in 2008 and 2.0 cfs thereafter, to be captured and delivered directly to the raceway at that location. For this purpose a proposal has been obtained from Eaton Drilling and Pump Service, copy of which is attached. If the improvement of Spring 1 does not generate the necessary quantities, additional collection and pump-back facilities will be added at downstream locations as needed.
5. Attached is a map reflecting the proposed mitigation alternatives. The map reflects the Country Club spring and Clear Lake pump stations with a portion of their existing

May 28, 2008

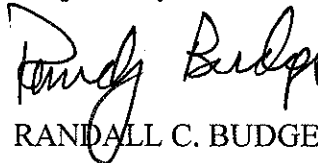
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looped water line. It also reflects the alternative collection sites and proposed pipeline to deliver water from the Fish and Game springs to the Snake River Farm raceway.

At this point it is anticipated that no infrastructure will be needed at the outlet of the Snake River Farm raceway to replace leased water to the lessor(s). Under the Fish and Game right, replacement would occur from the Snake River to the wetlands and under the Country Club right the replacement into the golf course irrigation system would occur at the Country Club's Clear Lake pump station.

In view of the Hearing Officer's Opinion, it remains the commitment of the Ground Water Users to file an Amended Mitigation Plan as soon as possible to comply with the procedural requirements set forth in CM Rule 43 and serve as a permanent plan and solution for Snake River Farm. However, because some of the details are still being worked out as above-described, including the Country Club lease, it is premature to file a detailed mitigation plan at this point. The Ground Water Districts are remain committed to the task at hand and are proceeding with due diligence and in good faith as quickly as possible.

Respectfully submitted,



RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Those Participating in the May 7, 2008 Status Conference by e-mail:

John K. Simpson

Randy R. McMillan

Lynn Carlquist, Chairman, North Snake GWD

Orlo Maughan, Chairman, Magic Valley GWD

Cindy Yenter, Water Master, WD 130

WATER CONVEYANCE AGREEMENT
BETWEEN THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER
DISTRICTS AND THE NORTH SIDE CANAL COMPANY

THIS AGREEMENT is made and entered into this 23 day of April, 2008, by and between the North Snake Ground Water District and the Magic Valley Ground Water District ("Districts"), and the North Side Canal Company, Ltd. ("NSCC").

WITNESETH:

WHEREAS, the Districts have requested NSCC to facilitate the diversion and conveyance of up to 35,000 acre feet of storage water obtained by the Districts into NSCC's canal system during the irrigation season of 2008 (March 1, 2008 to November 1, 2008) to deliver to designated landowners in the Districts who can be served by NSCC's system (approximately 9,300 acres) so to irrigate with surface water delivered by NSCC while curtailing an equal amount of groundwater diversions so that spring flows and aquifer levels of the Eastern Snake Plain Aquifer below the NSCC tract in water District 130 will be enhanced and stabilized to partly mitigate for the Districts' groundwater pumping impacts; and

WHEREAS, the parties wish to delineate their agreement in writing for the period of 3/1/08 through 11/1/08, recognizing that neither party shall be obligated to renew, and any extension shall be by additional written Agreement with terms and conditions as the parties may then negotiate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

- (1) Within seven (7) days of the date of storage allocation identified by Water District 01, the Districts shall cause the 35,000 acre-feet of storage water they have obtained through the Water District 01 Rental Pool or otherwise to be transferred to NSCC's storage account.
- (2) Provided the conditions set forth in this Agreement are met, including the requirement that the Districts' storage water is transferred to NSCC's account as specified in Paragraph (1), NSCC shall use its best efforts to divert and convey up to 35,000 acre feet of the Districts' water into NSCC's main canal at Milner Dam between 3/1/08 and 11/1/08; provided that such diversion of any water of the Districts may be curtailed in the

discretion of NSCC for whatever reason.

- (3) Water diverted for the Districts, shall be measured at Milner Dam. Losses between Milner Dam and the designated farm deliveries shall be measured by NSCC and only net amounts delivered. Nothing in the Agreement shall be construed as other than NSCC's consent to divert the Districts' water into NSCC's system.
- (4) The Districts shall pay NSCC for diverting and conveying water through the NSCC system at the rate of Eight Dollars (\$8.00) per acre foot measured at NSCC's diversions at Milner Dam. The Districts will pay Five Thousand Dollars (\$5,000.00) in advance to NSCC to initiate the diversions and conveyance. NSCC will first credit the \$5,000.00 against the total diversion and conveyance fee, and then will bill the Districts at the end of each month for the Districts' water diverted at Milner Dam, payment to be due within 20 days of the receipt of NSCC's invoice.
- (5) The Districts shall designate one (1) representative and one (1) alternate for the purposes of communication with NSCC and NSCC shall only be authorized to divert water or turn off water when requested by said designated representative of the Districts or his alternate, but only if NSCC is then agreeable. The Districts representative will request water deliveries at least forty-eight (48) hours in advance, including the requested amount in c/f/s. The Districts will give NSCC twenty-four (24) hours notice of a requested turn-off. NSCC will give the Districts twenty-four (24) hours notice of NSCC's intended shut-off of the Districts' water. All diversions shall be approved by the Watermaster of W.D. 01.
- (6) The Districts expressly and knowingly waive any rights or claims under Article 15, Section 4 of the Idaho Constitution and Idaho Code Section 42-914 to compel NSCC to continue to divert water into NSCC's system after the termination of this Agreement. The Districts represent that they have knowledge of the existence of Article 15, Section 4 of the Idaho Constitution and Idaho Code Section 42-914, understands and agrees with the interpretation herein stated, and further understands that the waiver contained in this paragraph is a condition precedent to NSCC's execution of the Agreement.
- (7) The Districts shall be responsible for complying with any applicable water quality standards and requirements for all the Districts water diverted into NSCC's system. The Districts agree to indemnify and hold NSCC harmless from any claim or claims of any third party claiming injury or damage by reason of diversion and conveyance of the Districts' water pursuant to this Agreement, including attorneys' fees, and to further indemnify, including attorneys' fees, for any NSCC costs associated with meeting federal or state laws or regulations due to the diversion and

conveyance of the Districts' water.

- (8) It is understood that NSCC has been approached by several entities to divert water into NSCC's system and convey it to various points in the NSCC system for redirection to various other purposes. The NSCC Board of Directors has determined that if they elect to facilitate such requests, they shall approve such requests in the following preferential order:
1. First Preference. North Snake Groundwater District and the Magic Valley Groundwater District for conveyance of storage water to the conversion acres subject to this Agreement within Water District #130 (approximately 9,300 acres) pursuant to this Agreement.
 2. Second Preference. Idaho Dairyman's Association for conveyance of mitigation water in NSCC's canal pursuant to a separate Agreement.
 3. Third Preference. Idaho Water Resource Board (IWRB) for conveyance of storage water in NSCC's system to a recharge site near Wendell on NSCC's W canal pursuant to a separate Agreement.
 4. Fourth Preference. IGWA for the conveyance of water in NSCC's system pursuant to the terms of a separate Agreement.

All agreements for diversions and conveyance by NSCC shall be in NSCC's discretion and be considered in the above preferential order...e.g. if First Preference takes all NSCC's available capacity in a given year, no other conveyances for other preferences shall be made; if First Preference takes 50% of available capacity, Second Preference could take the other 50% on such terms as are agreed. If Second Preference only takes 25% and capacity is still then available, Third Preference would be entitled in such terms as would be agreed, or to Fourth Preference if Third Preference doesn't elect to agree, to the extent of capacity not committed to those of higher preference.

All arrangements for conveyance must be in writing and formalized prior to May 20th of 2008 or fall to last preference if an agreement after that date is sought. All preferences shall be subordinated to higher preferences (e.g. Second Preference subordinated to First Preference) if all have formal agreements for conveyance finalized.

- (9) The Districts agree to pay to NSCC actual legal fees incurred by NSCC for the preparation of this Agreement, not to exceed \$2,000.00.

- (10) The Districts agree to secure and obtain the consent for the withdrawal of any and all objections to NSCC's water right claims filed in the SRBA by IGWA or any other ground water district by August 1, 2008. If the Districts fail to obtain the withdrawal of these objections to NSCC's water right claims in the SRBA by August 1, 2008, NSCC will refuse any future agreement for diversion and conveyance of the Districts' water for these conversion acres in future irrigation seasons.
- (11) Should any dispute or disagreement as to the terms or conditions of this Agreement arise, the prevailing party shall be entitled to recover reasonable attorney fees and costs incurred in defending or pursuing their respective legal rights.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

NORTH SNAKE GROUNDWATER
DISTRICT

By: _____
Its: _____

Date: _____

MAGIC VALLEY GROUNDWATER
DISTRICT

By: _____
Its: _____

Date: _____

NORTH SIDE CANAL
COMPANY, LTD

By: *Geel Dehl*
Its: *Manager*

Date: *April 23, 2008*

**WATER LEASE
WATER RIGHT NO. 36-4076**

This Lease Agreement ("Lease") is made and entered into this 28th day of May, 2008, between the IDAHO DEPARTMENT OF FISH AND GAME COMMISSION, whose mailing address is P.O. Box 25, Boise, Idaho 83701 ("LESSOR"); and the NORTH SNAKE GROUND WATER DISTRICT and the MAGIC VALLEY GROUND WATER DISTRICT whose joint mailing address for purposes of this Lease is P.O. Box 1391, Pocatello, Idaho 83204 (hereinafter referred to collectively as "LESSEE").

RECITALS:

WHEREAS, LESSOR is the owner of the decreed Water Right No. 36-4076, pursuant to the records of the Idaho Department of Water Resources ("IDWR") in multiple spring discharges near Clear Lakes in the cumulative amount of up to 3.59 cubic feet per second "cfs" of non-consumptive use water with a priority date of January 1, 1893 (hereinafter referred to as the "Water Right" or the "Leased Water"), which Water Right is graphically represented by the following table:

Water Right No.	Source	Quantity	Point of Diversion	Priority Date
36-4076	Springs	3.59 cfs	SWSWNE Lt 7 SWSENE Lt 8 SESENE Lt 8 SESWNW Lt 5 SESENE Lt 13, Sec. 1, T. 9S R. 14E, Gooding Cty SESENE Lt 5, Sec. 2, T. 9S R. 14E, Gooding Cty SWSWNW Lt 5, Sec. 6, T. 9S R15E, Gooding Cty	01-01-1893

AGREEMENT:

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually agree as follows:

1. Lease Property. LESSEE leases from LESSOR, and LESSOR leases to LESSEE, the Leased Water for the purpose of providing mitigation or replacement water to Snake River Farms.

2. Term. The initial term of this Lease shall be for a term of four (4) years, commencing effective as of May 1, 2008. Thereafter, this Lease shall be renewed for two successive terms of three (3) years each provided the parties can reach agreement on the lease amount which shall be subject to renegotiation and unless either party gives notice of intention not to renew the Lease to the other party not less than 180 days notice prior to the end of the

Lease, which may be given at any time prior to the expiration of the original term or any successive term(s). Additionally, LESSEE reserves the right to terminate this Lease upon ninety (90) days written notice to LESSOR in the event the Idaho Department of Water Resources does not approve LESSEE'S Mitigation or Replacement Water Plan to Snake River Farms and allow the use of the Leased Water for such purposes, or, if for any other reason LESSEE is unable to utilize the Leased Water for mitigation or replacement water purposes for Snake River Farms.

3. Rent. LESSEE shall pay to LESSOR rent in the amount of two hundred and fifty dollars (\$250) per month per cfs or pro rata for such portion of each cfs of water actually utilized by LESSEE, with the first monthly rental payment to be due and owing on the first day of the month following the execution of this Lease, and with each monthly payments due thereafter through the term of this Lease determined as provided herein..

4. Use by LESSOR. LESSOR reserves the unrestricted first right to use the Leased Water as allowed by the defined elements of the Water Right. LESSOR will have no responsibility for the operation, maintenance or use of LESSEE'S facilities or any damages related to, or caused by, LESSEE'S use of the Leased Water pursuant to this Lease. LESSOR grants LESSEE access to LESSOR'S property as may be necessary and appropriate to allow LESSEE to fulfill the purpose of this Lease to provide mitigation or replacement water to Snake River Farms.

5. Use by LESSEE. During the term of this Lease, LESSEE may, at LESSEE'S sole cost and risk (including but not limited to those risks identified in paragraph 6 below), divert and utilize the Leased Water non-consumptively (except for minor evaporation) for mitigation purposes to provide replacement water to Snake River Farm's raceway.

- a. LESSEE may design, construct and maintain at its sole risk and expense all pumps, pipes, diversion and delivery facilities and other improvements in order to utilize the Leased Water for mitigation or replacement water purposes to the head of the Snake River Farm raceway. This includes any changes or improvements LESSOR may wish to make to the point(s) of diversion or other elements of the Water Right.
- b. LESSEE shall submit the design of any facilities and improvements to be constructed and operated to LESSOR for approval prior to the commencement of construction.
- c. LESSEE shall comply with any permit requirements and any water right amendment requirements that may be determined necessary by any state agency to accomplish the use of the water contemplated by LESSEE, with LESSEE authorized to procure the same at their sole expense, and providing copies to LESSOR.

6. Available Water. As a condition of this Lease, LESSEE agrees to provide and make available to LESSOR'S wetlands an amount equal to the amount of water provided to Snake River Farms and of acceptable quality. Additionally, LESSEE shall comply with all terms and conditions of LESSOR'S water right.

7. Indemnification. LESSEE shall indemnify, protect, defend and hold LESSOR and its elected and appointed officials, officers, agents and employees, and each of them, free and harmless from any and all liabilities, claims, losses, damages, actions, costs and expenses of every kind (including defense costs and legal fees), which they, or any of them, may suffer or incur by any reason arising by reason of bodily injury, death, personal injury or property damage

resulting from the use or diversion of the Leased Water under this Lease by or from LESSEE, or any agent, employee, guest or invitee of LESSEE.

8. Default and Termination. If LESSEE fails to perform any obligation required of it hereunder, and such default continues for a period of 30 days after written notice thereof has been mailed or delivered to LESSEE by LESSOR, the LESSOR may, at its option, in addition to all other rights provided hereunder or otherwise available to LESSOR by law, immediately curtail and prevent the use and continued use of the Leased Water by LESSEE; and/or terminate this Lease; whereupon all rights accruing to LESSEE hereunder shall cease

9. Notices. All notices required or provided for by this Lease shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the each of the respective parties at the following addresses:

To LESSOR:

Idaho Department of Fish and Game Commission
P.O. Box 83720
Boise, Idaho 83720-0098

To LESSEE:

North Snake Ground Water District
153 E. Main Street
Jerome, Idaho 83338

Magic Valley Ground Water District
P.O. Box 430
Paul, Idaho 83347

With a copy to:

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, Idaho 83201

10. Warranty of Authority. LESSOR warrants and represents that it is the lawful owner of the Water Right and has all necessary power and authority to enter into this Lease.

11. Assignment and Subletting. LESSEE shall not assign or sublet any portion of the Water accruing to the Water Right, nor any interest in this Lease without LESSOR'S consent which will not be unreasonably withheld.

12. Law. This Lease shall be governed by the laws of the state of Idaho.

LESSOR:

**IDAHO DEPARTMENT OF
FISH AND GAME**

Dated: 5-28-08, 2008

Cal Groen
By: Cal Groen, Director

LESSEE:

**NORTH SNAKE GROUND WATER
DISTRICT**

Dated: _____, 2008

By: R. Lynn Carlquist, Chairman

**MAGIC VALLEY GROUND WATER
DISTRICT**

Dated: _____, 2008

By: Orlo Maughan, Chairman



EATON DRILLING AND PUMP SERVICE

P. O. BOX 230 * 485 SOUTH IDAHO ST

WENDELL, IDAHO 83355

PHONE: 208-536-2223 * FAX: 208-536-2024

"SERVING MAGIC VALLEY SINCE 1909"

May 20, 2008

North Snake Groundwater Users

%Mike Faulkner, Director

536-6658

Proposal for drilling two (2) irrigation well at Clear Lakes Fish Hatchery. (16" wells would allow pump bowls large enough to pump desired amount of 3.59 CFM. Drilling permits furnished by customer.

WELL:

1. Mobilization 1,600.00
2. 20" borehole, starter pipe & bentonite sealant @ \$225.00 per ft 4,500.00
3. 16" cased well including drive shoe 200' @ \$248.00 per ft 49,600.00
(casing A53B grade 16" X .375 wall).
4. 16" borehole below casing if necessary @ \$120.00 per ft *
5. Perforations in casing if necessary, using a down the hole perforator. 10,000.00
6. Pump well for development capacity and draw down by Layne Pump Co. includes a 4-hour step test pumping procedure. 4,500.00
7. See attached bid from Gnesa Excavation for water, cuttings, drill soap Protection and restoration of area. Customer should check with DEQ to See if this meets with their approval for discharging run off from drilling. (We may be blowing up to a 1000 - 1500 gpm in drilling, when we get into good water flow from well.)

NOTE: We feel that by 100' we should be done drilling. However the proposal is for 200'.

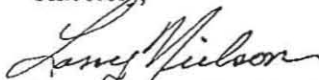
Well #2 - Same cost as first well. If we have to wait on pump testing of 1st well then would be a second charge for mobilization by Eaton Drilling & Gnesa.

TOTAL COST PER WELL

\$70,200.00

*Cost per well does not include #4 & #7.

Sincerely,


Larry Nielson, President



Excavation . Grading . Utility Installation
 Site Work . Base Work . Gravel
 GPS Survey . Site Design

Phone: (208) 934-4510
 Fax: (208) 934-8375

ESTIMATE

DATE: Tuesday, May 20, 2008

BILL TO

OWNER COMPANY: EATON WELL DRILLING
 ATTN: LARRY NIELSON
 ADDRESS: WENDELL

OFF PH: 536-2223
 OFF FAX: 536-2024
 CELL PH:
 EMAIL:

TERMS: PAYMENT IS DUE UPON COMPLETION AND/OR BY
 THE 10TH OF EACH MONTH

JOB NAME: CLEAR SPRINGS
 DESCRIPTION: RE-CHARGE WELLS
 ADDRESS: BUHL

OTHER INFO:

ESTIMATOR / TITLE: TERRY D. STRAUBHAAR Vice President
 CELL NO / EMAIL: 208 731-3961 gnesaexcavating@gmail.com

DESCRIPTION	UNITS	UNIT PRICE	AMOUNT
MOBILIZATION	1.00 EA	\$ 1,595.00	\$ 1,595.00
FURNISH AND INSTALL SOD	20,625.00 SF	\$ 0.55	\$ 11,343.75
FURNISH AND INSTALL 1" POLY IRRIGATION PIPE AND UP TO 150 RAIN BIRDS (NO VALVES OR OTHER PARTS INCLUDED)	1,875.00 LF	\$ 2.30	\$ 4,312.50
FURNISH AND PLACE SILT FENCE	200.00 LF	\$ 1.13	\$ 225.83
REMOVE SOD AND FINE GRADE AREA FOR NEW SOD	20,625.00 SF	\$ 0.28	\$ 5,775.00
EXCAVATION AND SUBSEQUENT BACKFILL TWO RETENTION PONDS MEASURING 20' X 20' X 4' DEEP EACH (ALL EXCAVATED MATERIAL REMAINS ON SITE)	800.00 SF	\$ 5.12	\$ 4,096.00
BACKHOE STANDBY	96.00 HR	\$ 90.00	\$ 8,640.00
1 BACKHOE AND 1 DUMP TRUCK TO CLEAN UP MUD	30.00 HR	\$ 203.76	\$ 6,113.40
ESTIMATED TOTAL			\$ 42,101.48

EXCLUSIONS/STIPULATIONS

ROCK HAMMERING, BLASTING, EXCAVATION, HAULING, OR ANY OTHER ROCK WORK IS NOT INCLUDED
 PERMITS, BONDS, PENALTIES OR FEES OF ANY KIND IS NOT INCLUDED
 SURVEYING OR CONSTRUCTION STAKING IS NOT INCLUDED
 SWPP PLANS OR IMPLEMENTATION OF IS NOT INCLUDED, IF REQUIRED THIS WORK WILL BE BILLED ACCORDINGLY
 STRUCTURAL EXCAVATION OR BACKFILL OF WALLS, FOOTINGS, ETC. IS NOT INCLUDED
 ANY EXISTING STRUCTURES, UTILITIES, ETC. ARE TO BE LOCATED AND PROTECTED BY THE OWNER OR HIS REPRESENTATIVE

We appreciate any opportunity to be of service to you, please call if we can be of any further assistance.

Sincerely,

Terry D. Straubhaar

Vice-President



Customer Signature: _____

DATE: _____